

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 USA

No. CR 08-00156 JW

12 Plaintiff,

**JURY NOTES AND RESPONSES**

13 v.

14 STEVEN RODRIGUEZ

15 Defendant.

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16  
17 Please see the subsequent pages for Jury Notes from deliberations and responses to juror  
18 notes as were found necessary.  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: **United States v. Steven Rodriguez**

NOTE FROM THE JURY

Date: 8/6/08

Time: 4:35 pm

Note No. 1

1. The Jury has reached a unanimous verdict. [Please mark] ( )

or

2. The Jury has the following question:

The Jury respectfully requests the Court to provide an instruction as to the definition of "contemporaneous" in Count Two.

DATE: 8-6-2008



\_\_\_\_\_  
Signature of Jury Foreperson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: **United States v. Steven Rodriguez**

NOTE FROM THE JURY

Date: 8/7/08

Time:

Note No. 2

1. The Jury has reached a unanimous verdict. [Please mark]

or

2. The Jury has the following question:

The Jury respectfully requests the Court to define the term "probable" as set forth in element no. 2 of the Justification instructions.

DATE: 8-7-2018



Signature of Jury Foreperson

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7 United States of America,  
8 Plaintiff,  
9 v.  
10 Steven Rodriguez,  
11 Defendant.

12 NO. CR-08-00156 JW

13 **SUPPLEMENTAL INSTRUCTION**  
14 **NO. 1**

15 \_\_\_\_\_ /  
16 Members of the jury, you have asked a definition of "contemporaneously."  
17 "Contemporaneously" means during the same time period as the possession such that  
18 the person remains and is an abuser of a controlled substance at the time of the  
19 possession. It is not necessary for the government to prove that the person used a  
20 controlled substance simultaneously with possession.

21 Members of the jury, you have also asked for a definition of "probable" as set  
22 forth in element No. 2 of the Justification instructions. "Probable" in this context  
23 means "likely" or "that can reasonably be expected to happen on the basis of the  
24 available information, though not certain."

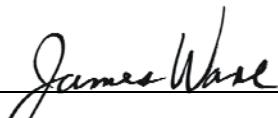
25 During its rebuttal argument, the government stated that Sophia Watkins was  
26 available to the defense as a witness, when this is not the case. On the advice of her  
27 own counsel, Ms. Watkins has chosen to exercise her Fifth Amendment privilege  
28 against self-incrimination. Only the government has the authority necessary to

1 overcome Ms. Watkins' claim of privilege, because only the government has the  
2 authority to grant her immunity from prosecution for any crime in which her  
3 testimony might implicate her. You must accordingly disregard the government's  
4 claim that Ms. Watkins was available a defense witness.

5 You heard mention that Ms. Watkins was present at the courthouse. She was  
6 before the Court with respect to this matter. However, her physical presence does not  
7 make her available as a witness under the circumstances where she is claiming a Fifth  
8 Amendment privilege against testifying and there is no grant of immunity to her by  
9 the government.

10 In addition, the government represented that Mr. Rodriguez had more than one  
11 felony conviction. Mr. Rodriguez has only one prior felony conviction, and the  
12 government was aware of this at the time it said otherwise. You must accordingly  
13 disregard as false the government's statement.

14  
15 Dated: August 7, 2008

  
16 JAMES WARE  
17 United States District Judge  
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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN  
2 MAILED TO:**

3 Cynthia Chin Young Lie, cynthia\_lie@fd.org  
4 Jeffrey Benjamin Schenk, jeffrey.b.schenk@usdoj.gov

5 **Dated: August 7, 2008**

6 **Richard W. Wiekling, Clerk**

7 **By: /s/ JW Chambers  
Elizabeth Garcia  
Courtroom Deputy**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: **United States v. Steven Rodriguez**

NOTE FROM THE JURY

Date: 8/7/08

Time:

Note No. 3

1. The Jury has reached a unanimous verdict. [Please mark]

or

2. The Jury has the following question:

The Jury respectfully requests the Court to read a portion of direct examination of Mr. Rodriguez's testimony regarding the incident of being attacked by two men in Ms. Watkins' apartment.

DATE: 8-7-2008



Signature of Jury Foreperson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: **United States v. Steven Rodriguez**

NOTE FROM THE JURY

Date: 8/7/08

Time:

Note No. 4

1. The Jury has reached a unanimous verdict. [Please mark]

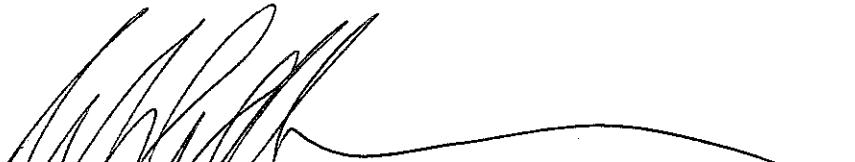
or

2. The Jury has the following question:

The Jury respectfully requests  
the Court to read ~~not~~ a portion of  
the cross examination of Ms. Peggy Spambauer  
re Ms. Watkins intention of "putting" Mr.  
Rodriguez away for 10 years.

The Jury respectfully requests

DATE: 8-7-2008

  
Signature of Jury Foreperson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: United States v. Steven Rodriguez

NOTE FROM THE JURY

Date: 8/7/08

Time:

Note No. 5

1. The Jury has reached a unanimous verdict. [Please mark]

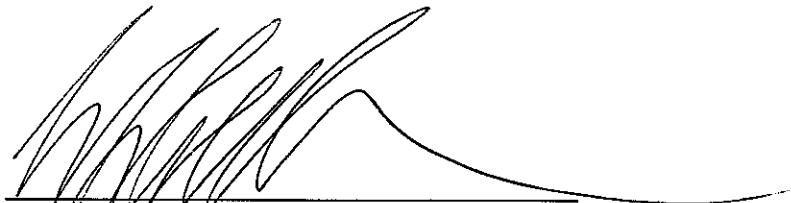
or

2. The Jury has the following question:

The Jury respectfully requests the Court  
to clarify instruction of element 2 of the Justification.  
The

The Jury submits that instruction of element 2  
is unclear and confusing.

DATE: 8-7-2008



Signature of Jury Foreperson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: **United States v. Steven Rodriguez**

NOTE FROM THE JURY

Date: 8-7-08

Time: 1:40 PM

Note No. 6

1. The Jury has reached a unanimous verdict. [Please mark] ( )

or

2. The Jury has the following question:

The Jury respectfully requests the Court to read back the testimony of Mr. Rodriguez, specifically the portion of testimony on direct examination wherein Mr. Rodriguez stated Ms. Watkins "brandished" a gun to get him to leave the property prior to the incident on Feb. 23, 2007.

DATE: 8-7-2008

Signature of Jury Foreperson

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7 United States of America,  
8 Plaintiff,  
9 v.  
10 Steven Rodriguez,  
11 Defendant.

12 NO. CR-08-00156 JW

13 **SUPPLEMENTAL INSTRUCTION**  
14 **NO. 2**

15 \_\_\_\_\_ /  
16 Members of the jury, you have asked for further instructions with respect to the  
17 second element of the Justification Instruction. Under the second element of my  
18 instruction, to find the Defendant not guilty by reason of justification, you must find  
19 that the Defendant "has proved by a preponderance of evidence that the Defendant did  
20 not recklessly or negligently placed himself in a situation in which it was probable  
21 that a firearm would be pointed at him under circumstances which would force him to  
22 take possession of the firearm to protect himself from death or serious bodily injury."  
23 I now wish to clarify and amend that instruction.

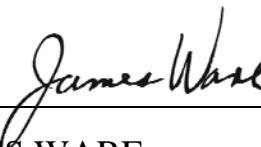
24 With respect to the second element, you are now instructed that to find the  
25 Defendant not guilty by reason of justification, you must find that the Defendant has  
26 proved by a preponderance of evidence that the Defendant did not recklessly place  
27 himself in a situation where he would be forced to engage in criminal activity.

28 Notice, that I have deleted the word "negligently" from my earlier instruction.

1        "Recklessly" means a situation in which the Defendant was aware of the risk  
2 that a firearm would be pointed at him because of his conduct and the risk was of such  
3 a nature and degree that to disregard that risk constituted a gross deviation from the  
4 standard of care that a reasonable person would exercise in such a situation.

5        You are invited to make requests for further clarification from the Court if  
6 necessary.

7  
8 Dated: August 7, 2008

9  
10   
11 JAMES WARE  
12 United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN  
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3 Jeffrey Benjamin Schenk, jeffrey.b.schenk@usdoj.gov

4 **Dated: August 7, 2008**

**Richard W. Wiking, Clerk**

6 By: /s/ JW Chambers  
7 Elizabeth Garcia  
Courtroom Deputy

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: **United States v. Steven Rodriguez**

NOTE FROM THE JURY

Date: 8 / 7 / 08

Time:

Note No. 7

1. The Jury has reached a unanimous verdict. [Please mark] (      )

or

2. The Jury has the following question:

THE JURY RESPECTFULLY REQUESTS A POINT OF ORDER:

WHAT HAPPENS IF WE AGREE ON COUNTS 1 + 2 BUT CAN NOT  
AGREE ON THE JUSTIFICATIONS?

DATE: 8-7-2008



Signature of Jury Foreperson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: **United States v. Steven Rodriguez**

NOTE FROM THE JURY

Date: 8/8/08

Time:

Note No. 8

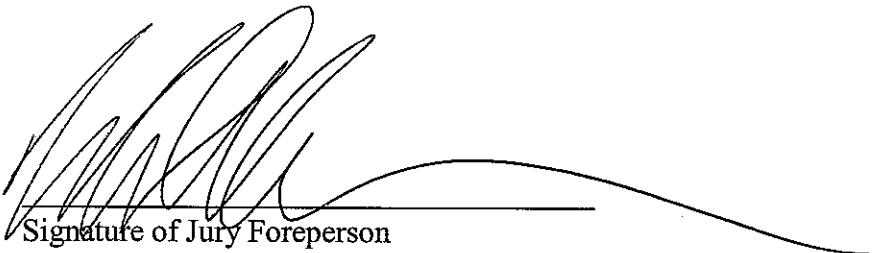
1. The Jury has reached a unanimous verdict. [Please mark]

or

2. The Jury has the following question:

The Jury respectfully requests a  
Clarification/definition of the word "Conduct"  
as set forth in the definition of "recklessly"  
Or element no. 2 of Justification (Page 2 of  
Supplemental  
Instruction No. 2)

DATE: 8-8-2008

  
Signature of Jury Foreperson

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

United States of America,  
v.  
Plaintiff,  
Steven Rodriguez,  
Defendant.

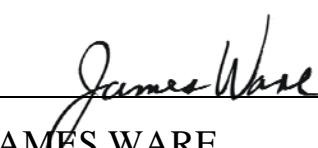
NO. CR-08-00156 JW

**SUPPLEMENTAL INSTRUCTION  
NO. 3**

Members of the jury, you have asked for further instructions with respect to the definition of the word "conduct" in my instruction with respect to the meaning of "recklessly." "Conduct" refers to the acts, if any, in which the person was engaged when the firearm was pointed at him or conduct which a reasonable person would understand that in the ordinary course of events posed a substantial risk that, if the conduct continued, a firearm would be pointed at him.

You are invited to make requests for further clarification from the Court if necessary.

Dated: August 8, 2008

  
JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN  
MAILED TO:**

2 Cynthia Chin Young Lie, cynthia\_lie@fd.org  
3 Jeffrey Benjamin Schenk, jeffrey.b.schenk@usdoj.gov

4 **Dated: August 8, 2008**

**Richard W. Wiekling, Clerk**

6 By: /s/ JW Chambers  
7 Elizabeth Garcia  
Courtroom Deputy

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: United States v. Steven Rodriguez

NOTE FROM THE JURY

Date: 8/8/08

Time:

Note No. 9

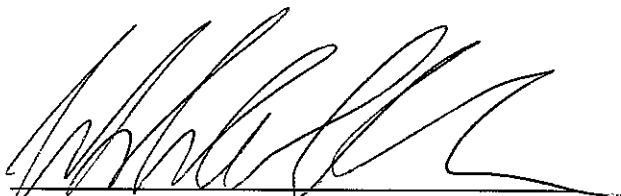
1. The Jury has reached a unanimous verdict. [Please mark]

or THE JURY IS AGREEMENT ON COUNTS 1 + 2 but AT AN IMPASS

2. The Jury has the following question:

ON ALLEGATIONS 2 + 5 of the  
INSTIGATIONS

DATE: 8-8-2008



A handwritten signature in black ink, appearing to read "J. W. Ware".

Signature of Jury Foreperson

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7 United States of America,  
8 Plaintiff,  
9 v.  
10 Steven Rodriguez,  
11 Defendant.

12 NO. CR-08-00156 JW

13 **SUPPLEMENTAL INSTRUCTION**  
14 **No. 4**

15 \_\_\_\_\_ /  
16  
17 Members of the jury, you have sent a note that you are at an impass on elements  
18 2 and 5 of the Justification Defense. Yesterday you have asked what would happens  
19 if you are able to reach a verdict of Guilty as to Counts 1 and 2, but that you are not  
20 able to reach a verdict with respect to the Defense of Justification. Your question  
21 came shortly before you were scheduled to recess for the evening. I verbally gave you  
22 an instruction yesterday. In view of you note I wish to give you further instructions  
23 with respect to this matter.

24 As I have instructed you the government must prove each element of the two  
25 charges beyond a reasonable doubt. You have heard Mr. Rodriguez and other  
26 witnesses testify that he had possession of a shotgun. You have received a stipulation  
27 that he was convicted of a felony. On that basis, you have undisputed evidence  
28

1 which, if believed by you, would be a basis for finding beyond a reasonable doubt on  
2 each of the elements of Court One.

3 With respect to Count Two, you have heard undisputed evidence with respect to  
4 Mr. Rodriguez' use of Methamphetamine. If you believe that evidence, together with  
5 his admitted possession of the shotgun, this may be a basis for your finding that the  
6 government has proved each of the elements of Court Two.

7 However, before you may return a verdict, you must consider the evidence  
8 submitted by the Defendant and by the Government with respect to the defense of  
9 Justification. All of you must agree on one of the three alternatives submitted to you  
10 on the verdict form. If any one of you believes that the defense of Justification has  
11 been proved and maintains that view, you may not return a verdict.

12 With respect to the defense of Justification you are asked to decide only one  
13 question: was Mr. Rodriguez justified in taking possession of the shotgun. Although  
14 there might be different times and places where the shotgun was possessed, in this  
15 case the possession started the moment you find that Mr. Rodriguez physically took  
16 possession of the firearm until he placed it on the balcony outside of Mr. Houston's  
17 apartment.

18 You have heard testimony from Mr. Rodriguez that he took the shotgun from  
19 Ms. Watkins after she pointed it at him. It is for you to decide if you believe the  
20 testimony of any witness. If you believe the testimony of Mr. Rodriguez, he was the  
21 victim of a crime, namely assault with a deadly weapon. A person, even a convicted  
22 felon or controlled substance abuser is justified in disarming a person who is pointing  
23 a shotgun at him.

24 An ordinary citizen who is not a felon or an abuser of controlled substances and  
25 who has been assaulted with a deadly weapon and who in self-defense has come into  
26 possession of the shotgun would act reasonably in summoning the police or seeing

1 that the police have been summoned and in maintaining possession of the weapon  
2 until the police arrive. The weapon would be evidence of the crime.

3 If you believe that a felon or controlled substance abuser had been assaulted  
4 with a deadly weapon, had taken the weapon from the assailant to end the threat, and  
5 believed that the police had been summoned and would be arriving in a matter of  
6 minute, in other words, if you believe that the felon has acted similarly to that of an  
7 ordinary citizen, this is a factor which you may consider in deciding if the felon or  
8 controlled substance abuser has proved justification.

9 To avoid any confusion on this matter, I am striking Element No. 5 from my  
10 instructions on Justification. Under the circumstances of this case, your determination  
11 should be based solely on whether Mr. Rodriguez was justified in possessing the  
12 firearm, without regard to how long he possessed it.

13 I have instructed you that the Defendant must prove Justification by a  
14 preponderance of the evidence. "Preponderance of the evidence" is defined as "more  
15 likely than not."

16 That means that Mr. Rodriguez had to produce evidence which, considered in  
17 the light of all the facts, leads you to believe that what he claims is more likely true  
18 than not. You must consider whether there is a conflict in the evidence between what  
19 the witnesses to the event testified to. Next, you must consider what testimony you  
20 believe. Then., with respect to the evidence you believe, if you had an imaginary  
21 scale, you would then put the evidence which you believe and which supports the  
22 defense of Justification on one side of the scales and put the evidence which you  
23 believe which does not support the defense of justification on the other side of the  
24 scales. If the evidence supporting Justification make the imaginary scales tip on that  
25 side, even slightly, you must return a verdict of not guilty by reason of justification. If  
26 you evaluate the evidence and you find that the evidence is evenly balanced between  
27 the two sides, the defense of Justification has not been proved and you must base you

**United States District Court**

For the Northern District of California

1 verdict on whether you find that the government has proved the elements of the  
2 Counts beyond a reasonable doubt. The Defendant is not required to prove the defense  
3 of Justification beyond a reasonable doubt.

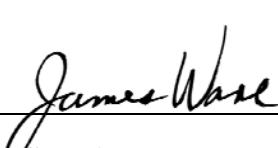
4 As jurors, you have a duty to discuss the case with one another and to deliberate  
5 in an effort to reach a unanimous verdict if each of you can do so without violating  
6 your individual judgment and conscience. Each of you must decide the case for  
7 yourself, but only after you consider the evidence impartially with your fellow jurors.  
8 During your deliberations, you should not hesitate to reexamine your own views and  
9 change your opinion if you become persuaded that it is wrong. However, you should  
10 not change an honest belief as to the weight or effect of the evidence solely because of  
11 the opinions of your fellow jurors or for the mere purpose of returning a verdict.

12 If you cannot reach a verdict you will be discharged and the government may  
13 elect to seek a new trial by a different jury. At this point, I am not convinced that you  
14 are incapable of reaching a verdict. All of you are equally honest and conscientious  
15 jurors who have heard the same evidence. All of you share an equal desire to arrive at  
16 a verdict. Each of you should ask yourself whether you should question the  
17 correctness of your present position.

18 I remind you that in your deliberations you are to consider the instructions I  
19 have given you as a whole. You should not single out any part of any instruction,  
20 including this one, and ignore others. They are all equally important.

21 I understand that Ms. Garcia has provided lunch for you. You may now retire  
22 and continue your deliberations.

23 Dated: August 8, 2008

24   
25 JAMES WARE  
26 United States District Judge  
27  
28

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN  
MAILED TO:**

2 Cynthia Chin Young Lie, cynthia\_lie@fd.org  
3 Jeffrey Benjamin Schenk, jeffrey.b.schenk@usdoj.gov

4 **Dated: August 6, 2008**

**Richard W. Wiking, Clerk**

6 By: /s/ JW Chambers  
7 Elizabeth Garcia  
Courtroom Deputy

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: United States v. Steven Rodriguez

NOTE FROM THE JURY

Date: 8/8/08

Time:

Note No. 16

1. The Jury has reached a unanimous verdict. [Please mark]

or

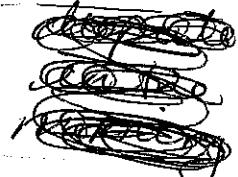
2. The Jury has the following question:

Please provide a new instruction for element 2  
of the justification.

The Jury is confused as to whether we should  
look to: ~~the~~ <sup>①</sup> whether the defendant  
was aware of a risk of a firearm being  
pointed at him by anybody because of going  
back to the lodge or <sup>②</sup> whether the defendant  
was aware of a risk of a firearm being  
pointed at him by Sophia because of their relationship.

DATE: 8-8-2008

Signature of Jury Foreperson



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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

United States of America,  
v.  
Plaintiff,  
Steven Rodriguez,  
Defendant.

NO. CR-08-00156 JW

**SUPPLEMENTAL INSTRUCTION  
NO. 5**

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You have asked for further instructions regarding recklessness. Remember, the Defendant must prove by a preponderance of the evidence that he did not recklessly place himself in a situation in which it was probable that a firearm would be pointed at him. It is for you the jury to decide from the evidence if the Defendant has met that burden of proof. From your question, I understand that you are seeking guidance on the issues of whether based on the past events, it was reckless for Mr. Rodriguez to go to the Lodge, in the first place, such that simply the act of initially going to Mr. Huston's apartment and later to Ms. Watson's apartment alone, deprived him of the defense of justification or must the recklessness of his conduct be judged from the events which took place immediately before the firearm was pointed at him.

There are circumstances in which the mere act of going to a place can be found to be reckless. There are circumstances where recklessness must be judged from the events which take place immediately before a firearm is drawn. I will, however,

1 suggest some factors you may consider in deciding if a person is acting recklessly  
2 both in going to a location and in conduct while at the location. You may use these  
3 factors to decide if you find Mr. Rodriguez has proved by a preponderance of the  
4 evidence that he was not reckless in placing himself in a situation in which it was  
5 substantially probable that a firearm would be pointed at him:

- 6       1. The frequency or infrequency that a firearm had been pointed at him when  
7 he went to the location;
- 8       2. Whether he was welcomed back to the location when he arrived or told to  
9 leave in a manner which suggests that deadly force would be used if he did not leave;
- 10      3. What took place between him and the person who pointed the firearm at him  
11 while he was at the location;
- 12      4. Was it a hostile or friendly environment when he arrived at the location;
- 13      5. Whether his relationship with other people at the location was hostile or  
14 friendly;
- 15      6. Was the firearm pointed at him under circumstances which would surprise  
16 an ordinarily prudent person that there was a threat of deadly force or whether the  
17 circumstances under which the firearm was pulled would suggest to an ordinarily  
18 prudent person that deadly force would be used;
- 19      7. Was the person conscious of a threat that deadly force would be used against  
20 him and proceeded to ignore that threat;
- 21      8. Was the person who pointed the firearm justified in threatening to use  
22 deadly force against him;
- 23      9. When he went to the location did he have reason to believe that deadly force  
24 would be used against simply by his presence;

25

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- 1           10. Did he go to the location for a legitimate purpose;  
2           11. Was it unlawful for him to be in the location where a firearm was pointed  
3 at him.

4

5 Dated: August 8, 2008

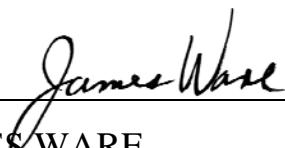
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11   
12 JAMES WARE  
13 United States District Judge

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3 Jeffrey Benjamin Schenk, jeffrey.b.schenk@usdoj.gov

4 **Dated: August 8, 2008**

**Richard W. Wiking, Clerk**

6 By: /s/ JW Chambers  
7 Elizabeth Garcia  
Courtroom Deputy

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. C-08-0156 JW

CASE TITLE: United States v. Steven Rodriguez

NOTE FROM THE JURY

Date: 8/8/08

Time: 3:00 pm

Note No. 11

1. Th

or \_\_\_\_\_

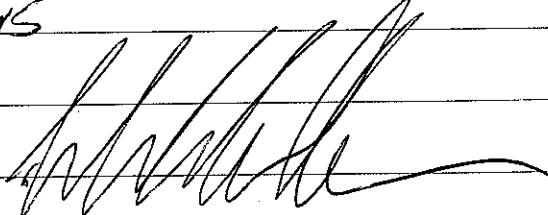
2. Th \_\_\_\_\_

THE JURY RESPECTFULLY SUBmits THAT

WE ARE AT AN IMPASS ON ELEMENT #2

OF THE INSTRUCTIONS

8-8-2008



Judge James Ware

DATE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRESIDING: JUDGE JAMES WARE

Case No. **C-08-0156 JW**

CASE TITLE: **United States v. Steven Rodriguez**

NOTE FROM THE JURY

Date: 8/8/08

Time:

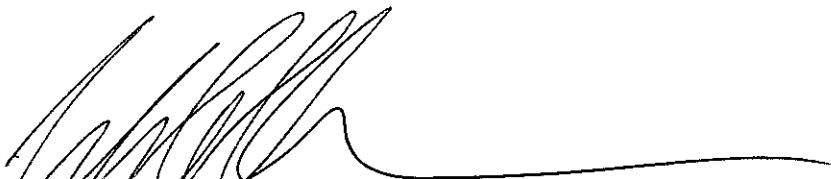
Note No. 12

1. The Jury has reached a unanimous verdict. [Please mark] (✓)

or

2. The Jury has the following question:

DATE: 8-8-2008



\_\_\_\_\_  
Signature of Jury Foreperson